

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CONNECTU LLC

Plaintiff,

v.

MARK ZUCKERBERG, EDUARDO
SAVERIN, DUSTIN MOSKOVITZ, ANDREW
MCCOLLUM, CHRISTOPHER HUGHES, and
FACEBOOK, INC.,

Defendants.

MARK ZUCKERBERG, and
FACEBOOK, INC.,

Counterclaimants,

v.

CONNECTU LLC,

Counterdefendant,

and

CAMERON WINKLEVOSS, TYLER
WINKLEVOSS, and DIVYA NARENDRA,

Additional Defendants on
Counterclaims.

Civil Action No.: 04-11923-DPW

Judge Douglas P. Woodlock

Magistrate Judge Robert B. Collings

**DEFENDANTS' NOTICE OF PENDING MOTIONS AND SUGGESTION
FOR CONSOLIDATING ORAL ARGUMENT ON ALL PENDING
MOTIONS BEFORE THE HONORABLE MAGISTRATE JUDGE COLLINGS**

On November 8, 2005, Judge Woodlock assigned all pretrial proceedings and dispositive motions to Magistrate Judge Collings. (See Docket #109). Because there is presently a hearing scheduled before Magistrate Judge Collings on November 18, 2005 at 10:30 AM, on but one

pending motion – Plaintiff’s Motion to Compel the Production of Mirror Images of Defendants’ Hard Drives and Other Electronic Memory Devices (Docket #37) – the Defendants respectfully suggest that the Court might want to consolidate oral argument on all pending motions, to make the most efficient use of the Court’s resources, and to reduce the travel expenses for the parties, since many of the parties’ respective attorneys will be traveling from California and Washington, D.C.

If the Court’s schedule permits, the Defendants request that the hearing on November 18, 2005 be set for oral argument on all pending motions currently before the Court. Alternatively, the Defendants ask that the hearing be rescheduled to such time as the Court requests, so that all motions can be addressed at the same time.

There are eight motions now pending before the Court, all of which are fully briefed. One of the most-pressing motions is the Parties’ *Joint* Motion to Modify the Court’s March 29, 2005 Scheduling Order. (Docket #105). This motion jointly requests that the Court vacate the current Scheduling Order and set new deadlines after all of the pending motions in this case are resolved. The close of fact and expert discovery is rapidly approaching – December 15, 2005 – and the parties do not believe that they can adequately complete their expert reports by the deadlines set by the Court, without resolution of the discovery issues raised in the pending motions.

In addition, Defendants have filed a motion to dismiss (Docket #90), which the parties agree should also be resolved by the Court before additional deadlines are fixed.

For the Court’s convenience, below is a list of the eight pending motions (organized by type of motion), along with the associated pleadings for each motion:

A. Motion Regarding Scheduling Order

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
1.	105	10/26/2005	Parties' Joint Motion to Modify March 29, 2005 Scheduling Order	n/a

B. Dispositive Motion

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
2.	94	10/14/2005	Facebook Defendants' Motion to Dismiss Plaintiff's Complaint	<p>Dkt. 93 (Facebook Defendants' Assented to Motion to Seal)</p> <p>Dkt. 95 (Facebook Defendants' Declaration in support of Motion to Dismiss of Cooper)</p> <p>Dkt. 96 (Facebook Defendants' Notice of filing under seal)</p> <p>Dkt. 97 (Facebook Defendants' Appendix of Non-Published Cases for Motion to Dismiss)</p> <p>Dkt. 98 (Facebook Defendants' Proof of Service of Under Seal Documents)</p> <p>Dkt. 99 (Facebook Defendants' Exhibits 3, 6, 7, 8, and 9) [FILED UNDER SEAL]</p> <p>Dkt. 100 (Facebook Defendants' Memorandum in support of Motion to Dismiss) [FILED UNDER SEAL]</p> <p>Dkt. 107 (Plaintiff's Opposition to Motion to Dismiss)</p> <p>Dkt. 110 (Facebook Defendants' Assented-to Motion for Leave to File Reply to Plaintiff's Opposition to Motion to Dismiss)</p>

C. Discovery Motions

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
3.	37	07/28/2005	Plaintiff's Motion to Compel the Production of Mirror Images of Defendants' Hard Drives and Other Electronic Memory Devices and Documents Created After May 21, 2004	<p>Dkt. 38 (Plaintiff's Memorandum in Support of its Motion to Compel)</p> <p>Dkt. 42 (Defendant Saverin's Opposition to Motion to Compel)</p> <p>Dkt. 43 (Facebook Defendants' Opposition to Motion to Compel and Cross-Motion for a Protective Order)</p>

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
				<p>Dkt. 44 (Facebook Defendants' Affidavit of Walker in Support of Opposition to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 45 (Facebook Defendants' Affidavit in Support of Opposition to Motion to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 46 (Facebook Defendants' Appendix of Non-Published Cases and Secondary Authority for Opposition to Motion to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 47 (Facebook Defendants' Notice of Newly Identified Authority in Support of Opposition to Motion to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 48 (Plaintiff's Assented-to Motion to Seal Exhibit 26 to its Proposed Reply Brief in Support of its Motion to Compel)</p> <p>Dkt. 49 (Plaintiff's Certificate of Service for Sealed Exhibit 26 in Support of its Reply Brief)</p> <p>Dkt. 50 (Plaintiff's Assented-to Motion for Leave to File a Reply to Defendants Opposition to Plaintiff's Motion to Compel and Plaintiff's Opposition to Facebook Defendants' Cross-Motion for a Protective Order)</p> <p>Dkt. 51 (Plaintiff's Exhibit 26 for its Assented-to Motion for Leave to File a Reply to the Opposition to Plaintiff's Motion to Compel) [FILED UNDER SEAL]</p> <p>Dkt. 74 (Plaintiff's Notice of Newly Identified Authority in Support of Motion to Compel)</p>
4.	43	08/18/2005	<p>Defendants' Cross-Motion for a Protective Order</p> <p>(The Cross-Motion was originally filed by the Facebook Defendants, but Defendant Saverin later filed a notice to join in the motion (Docket #59)).</p>	<p>Dkt. 44 (Facebook Defendants' Affidavit of Walker in Support of Opposition to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 45 (Facebook Defendants' Affidavit of Walker in Support of Opposition to Motion to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 46 (Facebook Defendants' Appendix of Non-Published Cases and Secondary Authority for Opposition to Motion to Compel and Cross-Motion for a Protective Order)</p> <p>Dkt. 47 (Facebook Defendants' Notice of Newly Identified Authority In Support of Opposition to Compel and Cross-Motion for a</p>

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
				<p>Protective Order)</p> <p>Dkt. 50 (Plaintiff's Assented-to Motion for Leave to File a Reply to Defendants Opposition to Plaintiff's Motion to Compel and Plaintiff's Opposition to Facebook Defendants' Cross-Motion for a Protective Order)</p> <p>Dkt. 51 (Plaintiff's Exhibit 26 for its Assented-to Motion for Leave to File a Reply to the Opposition to Plaintiff's Motion to Compel) [FILED UNDER SEAL]</p> <p>Dkt. 58 (Facebook Defendants' Assented-to Motion for Leave to File Reply Brief in Support of Facebook Defendants' Cross-Motion for Protective Order)</p> <p>Dkt. 59 (Defendant Saverin's Notice regarding Joining Cross-Motion for Protective Order)</p> <p>Dkt. 60 (Facebook Defendants' Reply in Support of Cross-Motion for Protective Order)</p>
5.	52	08/30/2005	Plaintiff's Motion to Compel Answers to Interrogatory Nos. 6, 9-14, 16, and 18	<p>Dkt. 53 (Plaintiff's Assented-to Motion to Seal Memorandum in Support of its Motion to Compel Interrogatory Answers, and Exhibits)</p> <p>Dkt. 54 (Plaintiff's Memorandum in Support of its Motion to Compel Interrogatory Answers) [FILED UNDER SEAL]</p> <p>Dkt. 55 (Plaintiff's Certificate of Service of filing under seal of Plaintiff's Memorandum in Support of Motion to Compel Interrogatory Answers, and Exhibits 16, 20, and 22)</p> <p>Dkt. 56 (Plaintiff's Exhibits 16, 20 and 22 in support of its Motion to Compel) [FILED UNDER SEAL]</p> <p>Dkt. 70 (Facebook Defendants' Assented-to Motion to Seal its Opposition to Plaintiff's Motion to Compel Interrogatory Answers)</p> <p>Dkt. 71 (Defendant Savernin's Opposition to Motion to Compel Interrogatory Answers)</p> <p>Dkt. 72 (Facebook Defendants' Opposition to Motion to Compel Interrogatory Answers) [FILED UNDER SEAL]</p> <p>Dkt. 73 (Plaintiff's Assented-to Motion for Leave to File Plaintiff's Reply to Defendants' Oppositions to Plaintiff's Motion to Compel Interrogatory Answers)</p>

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
6.	63	09/08/2005	Facebook Defendants' Motion to Compel Particularized Identification of Trade Secrets in Response to the Facebook Defendants' Interrogatory No. 2	<p>Dkt. 61 (Facebook Defendants' Notice Of Filing With The Clerk's Office)</p> <p>Dkt. 62 (Facebook Defendants' Assented-to Motion to Seal Memorandum in Support of Motion to Compel Particularized Identification of Trade Secrets in Response to the Facebook Defendants' Interrogatory No. 2)</p> <p>Dkt. 64 (Facebook Defendants' Appendix of Non-Published Cases and Secondary Authority in Support of Motion to Compel)</p> <p>Dkt. 65 (Facebook Defendants' Affidavit of Cooper in Support of Motion to Compel)</p> <p>Dkt. 66 (Facebook Defendants' Certificate Of Service)</p> <p>Dkt. 67 (Facebook Defendants' Memorandum and Exhibits 2 and 7 in Support of Motion to Compel Motion) [FILED UNDER SEAL]</p> <p>Dkt. 76 (Plaintiff's Assented-to Motion to Seal Exhibit 21 to Plaintiff's Opposition to the Facebook Defendants' Motion to Compel Particularized Identification of Trade Secrets)</p> <p>Dkt. 77 (Plaintiff's Certificate of Service)</p> <p>Dkt. 78 (Plaintiff's Opposition to the Facebook Defendants' Motion to Compel Particularized Identification of Trade Secrets)</p> <p>Dkt. 80 (Plaintiff's Exhibit 21 to Opposition to the Facebook Defendants' Motion to Compel Particularized Identification of Trade Secrets) [FILED UNDER SEAL]</p> <p>Dkt. 88 (Facebook Defendants' Assented-to Motion for Leave to File Reply to Opposition to Motion to Compel Particularized Identification of Trade Secrets)</p>
7.	68	09/09/2005	Plaintiff's Motion to Compel the Production of Documents in Response to Production Request Nos. 42, 44-46, 70-71, 85-96, 98-105, 107-110, 113, and 169	<p>Dkt. 69 (Plaintiff's Memorandum in Support of Motion to Compel)</p> <p>Dkt. 75 (Defendant Saverin's Opposition to Motion to Compel Production of Documents)</p> <p>Dkt. 79 (Defendant Saverin's Affidavit of Hawk in Opposition to Motion to Compel Production of Documents)</p> <p>Dkt. 81 (Facebook Defendants' Assented-to Motion to Seal Exhibit E to the Affidavit of</p>

<u>No.</u>	<u>Dkt.</u>	<u>Date</u>	<u>Pending Motion</u>	<u>Associated Pleadings</u>
				<p>Walker in Support of Opposition Motion to Compel Production of Documents)</p> <p>Dkt. 82 (Facebook Defendants' Opposition Motion to Compel Production of Documents)</p> <p>Dkt. 83 (Facebook Defendants' Affidavit in Opposition Motion to Compel Production of Documents)</p> <p>Dkt. 84 (Facebook Defendants' Affidavit of Walker in Opposition Motion to Compel Production of Documents)</p> <p>Dkt. 85 (Facebook Defendants' Appendix of Non-Published Cases in Support of Opposition to Motion to Compel Production)</p> <p>Dkt. 87 (Exhibit E to Affidavit of Walker in Opposition Motion to Compel Production of Documents) [FILED UNDER SEAL]</p> <p>Dkt. 89 (Plaintiff's Assented-to Motion for Leave to File Reply to Defendants' Oppositions to Motion to Compel the Production of Documents)</p>
8.	90	10/04/2005	Defendants' Joint Motion to Compel Testimony from ConnectU Responsive to Defendants' Amended 30(b)(6) Notice	<p>Dkt. 91 (Defendants' Joint Memorandum in Support of Motion to Compel Testimony from ConnectU Responsive to Defendants' Amended 30(b)(6) Notice)</p> <p>Dkt. 92 (Defendants' Declaration to Joint Motion to Compel Testimony)</p> <p>Dkt. 101 (Plaintiff's Opposition to Joint Motion to Compel Testimony)</p> <p>Dkt. 102 (Certificate of Service for Exhibit 8 to Plaintiff's Opposition to Joint Motion to Compel Testimony)</p> <p>Dkt. 106 (Defendants' Assented to Motion for Leave to File a Reply to Plaintiff's Opposition to Defendants' Motion to Compel Testimony)</p>

WHEREFORE, the Defendants respectfully request that the hearing on November 18, 2005 be set for oral argument on all pending motions currently before the Court, or alternatively, respectfully ask that the hearing be rescheduled to such time as the Court requests, so that all pending motions can be addressed at the same time.

Dated: November 14, 2005

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